

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

CARMINE J. FAZZI,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 03-58-B-W
	)	
DAVID CROOK, et al.,	)	
	)	
Defendants	)	

**RECOMMENDED DECISION ON MOTIONS TO DISMISS**

Carmine Fazzi has filed a civil rights action faulting the defendants for allowing a Maine warrant for his arrest to lie dormant, not providing him with proper procedure vis-à-vis his extradition and probation revocation, and not assuring that he was correctly informed of the date of a hearing on a temporary restraining order while he was at the Kennebec County Jail. (Docket No. 24.) Before the Court are two unopposed<sup>1</sup> motions to dismiss: one by Walter Anderson, David Crook, Evert Fowle, and the Maine Department of Corrections (Docket No. 30) and one by the Kennebec County Sheriff's Office (Docket No. 33). I now recommend that the Court grant both motions to dismiss and that it sua sponte dismiss the complaint against the Augusta Police Department for the following reasons.

***Motion to Dismiss Standard***

In deciding on the motions to dismiss, this Court is "obliged to accept the factual allegations contained in the complaint as true." Vega-Encarnacion v. Babilonia, 344 F.3d

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<sup>1</sup> Fazzi was given an extension of time to respond to the motions to dismiss and the new October 15, 2003, deadline has now passed.

37, 41 (1st Cir. 2003) (citing Martin v. Applied Cellular Tech., 284 F.3d 1, 5-6 (1st Cir.2002)). The fact that Fazzi has failed to respond to the motions does not relieve the court of its obligation “to examine the complaint itself to see whether it is formally sufficient to state a claim.” Id. (citing Pinto v. Universidad De Puerto Rico, 895 F.2d 18, 19 & n. 1 (1st Cir.1990) and McCall v. Pataki, 232 F.3d 321, 322-23 (2d Cir.2000)).

### ***Complaint Allegations***

#### ***Count I***

Fazzi’s amended complaint alleges that District Attorney David Crook had Fazzi arrested and jailed in Spokane, Washington in March 1997. Fazzi was released seven days later and told that all charges were being dropped. However, at the same time Crook was seeking a warrant in Maine, before the Kennebec County Grand Jury. At the time of the arrest, Crook knew Fazzi’s address and phone number because Crook was in daily communication with Fazzi’s wife. However, Fazzi was never notified of the warrant until his arrest in January 2003.

#### ***Count II***

Fazzi worked as a licensed insurance agent in the automotive business between 1998 and 2003. His employer had ‘wants and warrant’ checks done quarterly and ran background checks through various sheriff’s departments. Fazzi had valid driver’s licenses in Washington and Florida. The Augusta Police Department, the Kennebec Sheriff Department, the District Attorney’s Office, and the Maine State Police failed to follow the guidelines and procedures surrounding the execution and maintenance of warrants.

### ***Count III***

District Attorney Evert Fowle failed to bring Fazzi before a Maine judge for nine days following Fazzi's extradition to Maine from Florida and his probation revocation hearing was not held within seventy-two hours as required by statute.

### ***Count IV***

While Fazzi was in the custody of the Kennebec County Sheriff's Department he was served with papers for a temporary restraining order indicating that a hearing was to be held on April 17, 2003. On April 1, 2003, Fazzi was "served the conclusion of this action," losing contact with his children for two years. Fazzi was never brought to the hearing even though he was at the Kennebec County Jail where he had been served with the notification. Fazzi's family hired a law firm to represent him but, due to the typographical error, Fazzi and his lawyer were not aware that the hearing took place on April 1, 2003. As a consequence, he was denied his right to be heard and to defend against the allegations.

### ***Motions to Dismiss by Walter Anderson, David Crook, Evert Fowle, and Maine Department of Corrections***

Citing Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989) and Monell v. Department of Social Services, 436 U.S. 658, 691 (1978), these defendants argue that Fazzi cannot sue the State or its entities under 42 U.S.C. 1983, nor can he sue the individual defendants in their official capacities. (Docket No. 28 & 30.) They also state that under Heck V. Humphrey, 512 U.S. 477 (1994) he cannot attack the execution of the arrest warrant, the extradition to Maine, the revocation of his probation, or the

propriety of the underlying conviction through a civil rights action. They note that Fazzi plead guilty to the underlying criminal matter.

***Kennebec County Sheriff's Department Motion to Dismiss***

In its motion to dismiss, the Department states that the only allegation pertaining to it is that it served Fazzi with papers while he was incarcerated in April 2003 and that the Department failed to follow State guidelines regarding the maintenance and execution of the warrant. With respect to the latter, the Department notes that 15 M.R.S.A. § 601, et seq. governs the maintenance of arrest warrants, but argues that this statutory scheme does not create a protected liberty interest on Fazzi's behalf. Furthermore, the entry of the warrant into the National Crime Information Center database, the Department notes, must be done with the authorization of the Attorney General's Office, the District Attorney's Office, or the Department of Corrections. See 15 M.R.S.A. § 605(6). Therefore, the ability to so enter the warrant was not within the power of the Department. Furthermore, the Department argues, even if there was a violation of state law it does not alone amount to a constitutional violation.<sup>2</sup>

***Discussion***

With respect to Counts I and II, I conclude that these counts do not state a cognizable 42 U.S.C. § 1983 claim for which relief can be granted to Fazzi. The fact that a valid Maine warrant was obtained but not registered in a fashion that would apprise other jurisdictions of its existence did not deprive Fazzi of any constitutional right. If anything, the failure to register the warrant with a national network allowed Fazzi five to

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<sup>2</sup> I agree with the Department that nothing in Fazzi's amended complaint suggests that he is alleging an impermissible Department custom or practice.

six years of undeserved liberty and job security. It is the interest of public security and the “integrity of the judicial system” that the statute serves:

It is the responsibility of all police and sheriff departments and their officers to use all reasonable efforts to execute any outstanding arrest warrants of which they are aware. It is essential to the integrity of the judicial system that the execution of arrest warrants as orders of the court receive a high priority from all police and sheriff departments and their officers.

15 M.R.S.A. § 602. If any of these defendants failed in anyway with respect to their responsibilities on this score then the injury was to Fazzi’s employer and, perhaps, the general public. And, although the Augusta Police Department has not moved to dismiss this complaint, I recommend that the Court dismiss the complaint as to it pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) because these are the only counts that implicate that defendant.

Vis-à-vis Count III, I agree with the defendants that Fazzi cannot, at this juncture, use this federal civil rights action to challenge the validity of Maine’s criminal proceedings. In Heck the United States Supreme Court held:

that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

512 U.S. at 486-487 (footnotes omitted). Quite simply, if this Court were to determine that Fazzi was not provided with adequate process vis-à-vis his extradition and probation revocation, the validity of his current confinement would be called into question. Prior to bringing this federal civil action, Fazzi must first succeed in invalidating that determination in the state courts and/or through a 28 U.S.C. § 2254 action.

Finally, Count IV suffers from a different flaw. Fazzi nowhere complains that any one of these defendants had any part in preparing the notice for the April 2003 protective proceedings that purportedly misinformed Fazzi and his attorney of the date of the hearing. He has not alleged that any of these defendants interfered with his ability to get to the hearing. In fact, as Fazzi's own pleadings reveal, see Gray v. Poole, 275 F.3d 1113, 1115 (D.C. Cir. 2002), the notice was prepared by a clerk of the district court and the date on the notice appears as "4/1/03" contrary to Fazzi's assertion that it was April 17. (Mot. Amend, Docket No. 10, Ex. 6.)

### ***Conclusion***

For these reasons I recommend that the Court **GRANT** the two unopposed motions to dismiss. Furthermore, I recommend that the Court **sua sponte DISMISS** the complaint as to the Augusta Police Department pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) because the complaint fails to state a claim against it.

### **NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive

memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

October 22, 2003.

/s/ Margaret J. Kravchuk

U.S. Magistrate Judge

**U.S. District Court  
District of Maine (Bangor)  
CIVIL DOCKET FOR CASE #: 1:03-cv-00058-JAW  
Internal Use Only**

FAZZI v. CROOK et al

Assigned to: JUDGE JOHN A. WOODCOCK JR

Referred to: MAG. JUDGE MARGARET J.

KRAVCHUK

Demand: \$250000

Lead Docket: None

Related Cases: None

Case in other court: None

Cause: 42:1983 Prisoner Civil Rights

Date Filed: 04/07/03

Jury Demand: None

Nature of Suit: 550 Prisoner: Civil  
Rights

Jurisdiction: Federal Question

**Plaintiff**

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